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Social Security and Public Welfare

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called the "common-enemy" doctrine, which allows the owner of land to obstruct the flow of surface water on to his land. In *Lunsford v. Stewart*[30] the Franklin County Court of Appeals held it was reasonable for the owner of certain city property to fill his lot up to grade thus preventing the surface water from draining on to his lot from an adjoining lot. It is significant that the court referred to the common-law rule and the civil-law rule, then based its decision on the reasonable-use rule though an Ohio Supreme Court decision had specifically held the common-law rule applied in cities. The reasonable-use rule will certainly avoid the problem of determining when certain property is rural and when it is urban and will permit the courts to do justice by evaluating the circumstances of each case. One of the factors to be considered is whether storm sewer facilities are available.

Title Policies

In *Burks v. Louisville Title Ins. Co.*[31] the Summit County Court of Appeals sustained a verdict and judgment in favor of the owner for the full amount of his title guaranty policy. The owner recovered because a third person had title to a portion of the land covered by the policy. The court properly refused to restrict the land and covered by the policy construing the description by metes and bounds in the owner's deed with a description in the deed to the owner's grantor which was referred to in the owner's deed in the customary way as "being that part of the premises . . . as described in deed recorded in Book. . . ." The amount awarded to the owner included the cost to him of relocating his driveway, doing additional grading, and for the delay in the construction of his home. The owner in this case purchased an unimproved lot which was covered by a title guaranty policy for $2,000, then neglected to obtain additional coverage with respect to the improvements which he placed on this lot. Persons who purchase unimproved property and then improve it should be careful to increase the amount of their title policies if they wish to be adequately protected.

ROBERT N. COOK

SOCIAL SECURITY AND PUBLIC WELFARE*

Aid for the Aged Liens

It is rather unusual that in the first year for this new subject there is a public assistance case to report. In *Hausser v. Ebinger*,[1] the Ohio Supreme Court held that under the provisions of Section 5105.13 of the Revised

[30] 95 Ohio App. 383, 120 N.E.2d 136 (1953).
[31] 95 Ohio App. 509, 121 N.E.2d 94 (1953).

Code, a married person who applies to the state for aid for the aged thereby obligates his or her estate, upon death, to repay the state not only the amount of aid received by him or her, but also the amount of aid, if any, received by his or her spouse. It was said that the statutory obligation to repay the aid furnished to the spouse is in the nature of a suretyship obligation without consideration moving directly to such married person, but, where the estate of the spouse is sufficent to repay the aid so furnished to the spouse, the married person or his or her estate is entitled to exoneration as to such aid. As the opinion indicates, no obligation arises during the lifetime of the recipient of aid, but of course the heirs will be affected upon the recipient's death. There is some political opposition to this lien provision in the Ohio law, but there does not appear to be any immediate danger of its being eliminated. A number of other state laws in this field contain a similar provision, but it is by no means a uniform requirement.

Unemployment Insurance

There have been some very significant decisions relating to the unemployment insurance program in Ohio during the past year. Noticeably more than in some of the prior years that come to mind, the courts seem to have adopted an increasingly liberal attitude toward the interpretation of the Ohio Act.

1. Vacation Shut-down — Availability for Work

One of the most interesting problems dealt with concerned the eligibility of certain workers for benefits during periods of plant shut-down for vacation purposes. Many industries find it necessary or convenient to grant vacations all at once, and in these cases the contract with the union specifies the period of the shut-down and which employees shall have vacation with pay. For those who do not qualify for pay, usually because of the length of time on the job, it is interesting to speculate whether the period in question is a vacation or an enforced lay-off. In any event, the Ohio courts seem to have found one reason or another for denying benefits in most of these instances.

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* This heading is new in this year's issue, having been adopted to coincide with the topical heading now being used in the Reporter System of the West Publishing Company. Included under this heading will be material relating to the Public Assistance programs (aid to the aged, aid to the blind, aid to dependent children, and aid to the disabled, maternal and child welfare, medical care legislation, and vocational rehabilitation). The bulk of the material, however, will relate to unemployment insurance, which in the past has been a separate heading. Old age and survivor's insurance and railroad retirement benefits also come within the scope of the heading, but these are exclusively federal programs and there is likely to be little, if any, state material relating to these subjects.

[1] 161 Ohio St. 192, 118 N.E.2d 522 (1954).

In *Cambridge Glass Co. v. B.U.C.*,[2] the Court of Appeals for Guernsey County took refuge in the idea that any layoff during the period of plant shut-down is controlled by the agreement with the union and nothing else. Actually, the contract in this case was industry-wide and did not require a plant shut-down for the vacation period but simply permitted the employer such a choice. Exactly how a private contract can alter or avoid the express terms of a state statute is not entirely clear. The court went so far as to suggest that the contract would be abrogated if workers who did not qualify for vacation pay could get unemployment benefits. This reasoning of course, ignores the fact that the state law contains no provision to protect contracts of this nature; and it is equally difficult to find just how the contract is affected by the circumstance that some workers might be able to qualify for a benefit that is only a fraction of the pay which they would receive if work were available during the period in question.

The Common Pleas Court of Tuscarawas County, in *Gopp v. Board of Review*,[3] held that during the shut-down period the claimant was voluntarily unemployed and furthermore was not available for work and had failed to establish that she was actively seeking work. There is no express requirement that a worker's unemployment be involuntary under the terms of the Ohio Act, although that is the premise underlying many of the eligibility requirements and disqualification provisions contained in Section 4141.29 of the Revised Code. The soundest basis for the decision in this case is the court's conclusion that watching the want ads in the paper did not fulfill the requirement of actively seeking work.[4]

In contrast to these two decisions, the Trumbull County Common Pleas Court held that where a collective bargaining agreement provided for a paid vacation after a stated period of employment and permitted the employer to shut down the plant, but also provided that the employer would attempt to provide employment on maintenance or other work for those not entitled to vacation benefits, an employee who was not entitled to vacation benefits and who sought employment with the employer in question and elsewhere during the vacation period without success, was entitled to benefits.[5] In so holding, the court followed what it considered to be the majority view in other jurisdictions and took issue with the earlier holdings of other Ohio courts.

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[2] CCH U.I. Serv. [Ohio] ¶ 8411 (1953).

[3] CCH U.I. Serv. [Ohio] ¶ 8416 (1954).

[4] There is also a suggestion in the opinion in this case that the claimant, being on "vacation," albeit without pay, was not unemployed in any event; but earlier in the same opinion the court distinctly said that the claimant "must be considered totally unemployed." The latter analysis appears to be more in keeping with the facts as they apply to the express definition contained in the law.

[5] Yobe v. Sherwin Williams Co., 122 N.E.2d 202 (Trumbull Com. Pl. 1954).

The last word was had by the Mahoning County Common Pleas Court in *Barrick v. Board of Review*,[6] which adopted the voluntary unemployment theory and distinguished the *Yobe* case on the basis of the provision in the contract for employment in maintenance work.

There is much to be said, of course, for the reasoning of the Trumbull County court, which in truth is basically inconsistent with the theories on which the other decisions have been based. If ineligibilty is to be found in these shut-down cases, it had best be based on the express provisions of the statute, as happened in the *Gopp* case when the court found that there had not been an active search for work. Perhaps the stronger reasoning will eventually prevail in Ohio, but in the meantime there is no doubt that the majority of the Ohio courts adhere to the view that appears to be in the minority elsewhere. The *Yobe* decision may become a landmark in any event for its obvious value to the draftsmen of collective bargaining agreements.

2. Active Search for Work

In another interesting series of cases, the question of what constitutes an "active search for work" received careful scrutiny. It was held, for instance, that where the uncontradicted testimony of the claimant established that as an unemployed seasonal employee of a canning factory in a small town, she had visited at least two prospective employers each week, the decision of the Board of Review that she had not actively sought work and therefore should be denied benefits, was against the weight of the evidence, unreasonable and unlawful.[7] Likewise, a claimant was held to be eligible where she reported at least two contacts with large employers in her district and had not been referred to any employer wanting her type of service. The court indicating that she was not obliged to search for types of jobs in which she had no training or capacity.[8] In order to conduct an active search, moreover, it is not required to seek employment in a town 12 or 15 miles from the village in which the claimant lived and previously had been employed.[9]

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[6] CCH U.I. Serv. [Ohio] ¶ 8447 (1954).

[7] Nofzinger v. LaChoy Food Products Div., 116 N.E. 2d 773 (Fulton Com. Pl. 1953). The court mentioned, but gave little weight to, the conclusion of the referee that the claimant seemed to him more interested in complying with the statutory requirements than in getting a job. The law, of course, does not require an examination of the state of the claimant's mind in the course of conducting her search; nor does it prescribe the proper amount of zeal to be exhibited in the pursuit of employment.

[8] Mills v. Marquette Metal Products Co., CCH U.I. Serv. [Ohio] ¶ 8450 (Wayne Com. Pl. 1954). *Accord:* Rychener v. LaChoy Food Products Div., 116 N.E.2d 777 (Fulton Com. Pl. 1953).

[9] Schroeder v. LaChoy Food Products Div., 116 N.E.2d 775 (Fulton Com. Pl. 1953).

3. Refusal of Suitable Work

In one of its most significant decisions in this field in recent years, the Ohio Supreme Court, in *Tary v. Board of Review*,[10] held that where a claimant is a long standing and conscientious member of a religion which teaches as one of its tenets that secular work on Saturday is a violation of the law of God, and where such claimant did not engage in work on Saturday in his last employment, his rejection in good faith of proffered employment which required work on Saturday was excused since such work involved a risk to the claimant's morals and therefore was not "suitable" as that term is defined in the law. In an able opinion, concurred in by Judges Taft, Zimmerman, and Stewart, Judge Lamneck, the former State Director of Welfare, pointed out that in determining whether work was suitable under Section 4141.29 of the Revised Code, the administrator must consider the degree of risk to the claimant's morals, the test thereof being subjective and dependent upon the bona fide conscientious beliefs of the individual and his sense of duty. *Kut v. Albers Super Markets, Inc.*,[11] was properly distinguished on the basis of the "suitable work" provision which was not in the law prior to 1949.[12]

In other cases relating to the refusal of work, it was held that where the claimant was offered a job on condition that she relinquish her seniority rights with her prior employer, such a condition was unreasonable and her refusal to accept the job was justified;[13] and where the claimant went to the employer's home at the time indicated by the employment service and spent half an hour on a very cold afternoon trying to find the lady she was supposed to see, it was held that there had been a sufficient compli-

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[10] 161 Ohio St. 251, 119 N.E.2d 56 (1954).

[11] 146 Ohio St. 522, 66 N.E.2d 643 (1946).

[12] A fact which must have given heart to the supporters of the important 1949 amendments, which clearly were designed to liberalize the benefit provisions of the Ohio Act. Judge Hart's dissenting opinion, with Judges Weygandt and Middleton concurring, urged the application of the doctrine of *Chambers v. Owens-Ames-Kimball Co.*, 146 Ohio St. 559, 67 N.E.2d 439 (1946), wherein a claimant was found ineligible for refusing to accept an offer of work on the ground that such acceptance would violate the rules of his union and might result in his expulsion therefrom. Judge Hart contended that "if the work was properly suitable for another person as to morals, it was so suitable for the claimant so far as the character of the work itself was concerned." This would have been a novel way indeed to render the amendment ineffective. If applied literally, a youth or a slip of a girl might be required to accept work normally done only by the huskiest of men, such as in a foundry; any number of incongruous situations can be imagined without difficulty, and the claimant's refusal in every instance would be on pain of losing his right to unemployment benefits. Incidentally, it was Judge Hart who wrote the majority opinion in the *Chambers* case, with Judges Zimmerman and Bell dissenting.

[13] Hobbs v. Board of Review, 122 N.E.2d 707 (Ohio App. 1953).

ance with the referral to avoid disqualification;[14] but where the claimant refused an offer in Cincinnati, where she had previously worked, because she was staying with her husband on a farm during his vacation and did not have a ride into the city, the refusal was held to be without good cause.[15]

4. Voluntary Quit

The voluntary quit disqualification also received a great deal of attention in the courts. In *Woodward v. Mullins Mfg. Co.*,[16] it was held that failure to report for work until nearly a month after the termination of the worker's 30-day leave of absence amounted to a quit, and the claimant was held to be barred from benefits by the terms of the statute. Where the record disclosed, however, that a female worker had undergone several experiences while proceeding to and from her place of employment during the night season which were calculated to create a reasonable concern for her own safety, it was held that her bona fide refusal of a transfer from daytime employment to the night shift was justified and did not constitute quitting work without just cause.[17]

Where the claimant testified that she quit because she was being compelled to work overtime to the detriment of her health, no other evidence being presented, it was held that the cause was just and the board's decision denying benefits was clearly against the manifest weight of the evidence.[18] Likewise, a similar result was reached where the claimant had quit because of dissatisfaction with the working conditions, even though she had endured the conditions complained of for approximately two years.[19] However, a reprimand by the foreman is not considered good cause for quitting,[20]

[14] Williams v. Administrator, CCH U.I. Serv. [Ohio] ¶ 4812 (Trumbull Com. Pl. 1954).

[15] Tucker v. Administrator, CCH U.I. Serv. [Ohio] ¶ 8452 (Hamilton Com. Pl. 1954).

[16] CCH U.I. Serv. [Ohio] ¶ 8414 (Trumbull Com. Pl. 1954).

[17] Reeves v. Board of Review, 118 N.E.2d 159 (Cuyahoga Com. Pl. 1953). The offer of a transfer was occasioned by the fact that work was not available on the day in question in claimant's department. It was established that the locality between the claimant's home and her place of work, through which she had to walk, was a "bad neighborhood," and she had been attacked on one occasion and followed on another.

[18] Hoffer v. State, CCH U.I. Serv. [Ohio] ¶ 8454 (Licking Com. Pl. 1954).

[19] Redmond v. Harwood Screw Products, Inc., CCH U.I. Serv. [Ohio] ¶ 8453 (Clark Com. Pl. 1954). Among the conditions complained of were inadequate seating and rest rooms, no lunch room, and dangerous machinery unprotected by safety devices. The court accepted the claimant's explanation that economic necessity had forced her to continue working under these conditions until worsening conditions and an assurance of another job induced her to act.

[20] Patterson v. Board of Review, CCH U.I. Serv. [Ohio] ¶ 8413 (Trumbull Com. Pl. 1954).

and neither is a domestic condition requiring claimant to be closer to his home where the condition described was the same as when he took the job.[21]

5. Labor Dispute Disqualification

Workers engaged in a slow-down of production during wage negotiations, who became unemployed when management shut down the plant, were held by the Montgomery County Common Pleas Court to be disqualified on the basis that their unemployment was due to a labor dispute rather than a lock-out.[22] The court reasoned that the slow-down was part of the labor dispute and that the shut-down was compelled by economic necessity, a problem somewhat akin to the time-worn controversy concerning the chicken and the egg.

In *Allen v. Youngstown Mun. Ry. Co.*,[23] the Mahoning County Court of Appeals held that maintenance and repair workers employed by a firm operating a bus system who were notified that they would not be employed for the duration of a strike then in progress called by the bus drivers, were unemployed because of a labor dispute and disqualified under the terms of the Ohio Act even though they were not members of the striking union. So long as the strike occurs at the plant or establishment where the claimant is employed, this result is virtually unavoidable under the Ohio provision, which omits the language contained in the laws of many of the other states imposing disqualification only in those instances where the claimant is "interested" in the dispute, or involved therein.

Discharge for Just Cause

Failure to appear for work on July 4 plus six days absence in a period of six months, was considered not to amount to excessive absenteeism, and it was held that a discharge based thereon was not for just cause in connection with the claimant's work so as to result in disqualification.[24] But a discharge for non-payment of union dues where such action was required under a collective bargaining agreement, is for just cause and does bar the payment of benefits.[25] And where the claimant had frequented the em-

[21] Cozert v. Board of Review, CCH U.I. Serv. [Ohio] ¶ 8451 (Meigs Com. Pl. 1954).

[22] Abernathy v. Board of Review, CCH U.I. Serv. [Ohio] ¶ 8445, 1954).

[23] CCH U.I. Serv. [Ohio] ¶ 8449 (1954), reversing the lower court's decision in the same case and overruling the earlier case of *Diaz v. Koppers Co.*, CCH U.I. Serv. [Ohio] ¶ 8295. A similar conclusion was reached by the Scioto County Court of Appeals in *Cornell v. Bailey*, CCH U.I. Serv. [Ohio] ¶ 8423 (1954), where the claimants were laid off because of greatly reduced operations in a wholesale grocery business resulting from a strike of the company's drivers.

[24] Bledsoe v. Administrator, CCH U.I. Serv. [Ohio] ¶ 8428 (Trumbull Com. Pl. 1954).

[25] Dennis v. Board of Review, CCH U.I. Serv. [Ohio] ¶ 8429 (Perry Com. Pl. 1954).

ployer's locker room to smoke, having fallen asleep on at least one occasion, his subsequent discharge was considered to be for just cause within the meaning of the statute, with resulting disqualification.[26]

Experience Rating Questions

On the question of the liability of a successor in interest for contributions owed by his predecessor, it was held that the State's lien for unpaid contributions filed two years after the successor had acquired the business was not effective where the lien had not been recorded, and no notice given to the successor, prior to such purchase.[27] With regard to the transfer of experience rating accounts, the Franklin County Common Pleas Court ruled that a company which took over approximately 93% of another company's business was not entitled to the predecessor's tax rate under the provisions contained in the Ohio law prior to 1952.[28] Since the 1952 amendment, even partial transfer is permitted without losing the benefit of the predecessor's experience.

Procedure

Several procedural questions were settled during the year. In *Miller v. B.U.C.*,[29] the Ohio Supreme Court held an administrative agency has no partisan interest in its decisions and may not appeal from a judgment which in effect vacates its decisions unless expressly authorized by law to do so. The Board of Review, the court said, is not an "interested party" as defined in the act for the purpose of appeal. In some state acts the authority to appeal is expressly given. Also, it was held that an appeal to the court will be dismissed where the claimant failed to exhaust her administrative remedies by skipping an appeal to the board of review;[30] and the required notice of appeal to the court from the board of review must set forth the particular errors or omissions relied upon in order to effect an appeal.[31]

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[26] Stititez v. B.U.C., CCH U.I. Serv. [Ohio] ¶ 8430 (Hamilton Com. Pl. 1953).

[27] B.U.C. v. Stultz, CCH U.I. Serv. [Ohio] ¶ 8444 (Lawrence Com. Pl. 1954).

[28] Apex Smelting Co. v. Cornell, CCH U.I. Serv. [Ohio] ¶ 8434 (1954). The decision was based upon the theory that in order to obtain a predecessor's experience rate, the business must be transferred in its entirety.

[29] 160 Ohio St. 561, 117 N.E.2d 427 (1954).

[30] Miles v. B.U.C, CCH U.I. Serv. [Ohio] ¶ 8432 (Franklin Com. Pl. 1954). The statute is quite specific on this point.

[31] McGee v. Timken Roller Bearing Co., CCH U.I. Serv. [Ohio] ¶ 8446 (Muskingum Com. Pl. 1954). The court pointed out that as in any other case, the adverse party is precluded from making a direct answer unless such a specification is made.